Kuek Siew Chew *v* Kuek Siang Wei and another
[2014] SGHC 237

Case Number	: Suit No 966 of 2012
Decision Date	: 18 November 2014
Tribunal/Court	: High Court
Coram	: George Wei JC
Counsel Name(s)	: Tng Kim Choon (KC Tng Law Practice) for the plaintiff; Gopalan Raman (KhattarWong LLP) for the defendants.
Parties	: Kuek Siew Chew — Kuek Siang Wei and another

Deeds and Other Instruments – Deeds

Equity – Undue Influence

Probate and Administration – Distribution of Assets

18 November 2014

George Wei JC:

Introduction

1 This was a case arising out of a family dispute over the estate of Kuek Ser Beng ("KSB"), who passed away on 30 January 2007 without leaving a will. The plaintiff, Kuek Siew Chew ("the Plaintiff"), is a daughter of KSB, while the defendants, Kuek Siang Wei ("KSW") and Kuek Tsing Hsia ("KTH") (referred to collectively as "the Defendants"), are the grandchildren of KSB. The Defendants are the administrators of KSB's estate. The central dispute in the present case pertained to the validity of three instruments – a letter of consent, a deed of consent and a deed of family arrangement. The primary effect of these instruments was to allow KSB's estate to be distributed in accordance with an unsigned note purportedly written by KSB. The trial took place over a period of six days and I reserved judgment upon the conclusion of the trial. Having considered both the evidence and the parties' submissions, I allowed the Plaintiff's claim in part. The letter of consent, deed of consent and deed of family arrangement were set aside and KSB's estate was to be distributed in accordance with the rules set out in the Intestate Succession Act (Cap 146, 2013 Rev Ed) ("the ISA"). The Defendants have since filed an appeal against my decision and I now set out the grounds for my decision.

The facts

2 At the outset, it is observed that the dispute between the parties involved a mix of both factual and legal issues. While it is recognised that the parties have given a relatively comprehensive and wide-ranging account of the events that had taken place over the course of almost six years after KSB's demise back in 2007, for the purposes of this decision, I will only focus on the facts that are relevant to the issues at hand.

Dramatis personae

3 I will first begin with a brief description of the main persons involved in the present dispute:

(a) KSB: KSB passed away on 30 January 2007 without leaving a will. He was married to Lim Swee ("LS") and they had three children. KSB also had a second family with Goh Ah Pi ("GAP") and they had five children.

(b) LS: The late wife of KSB. LS passed away on 19 October 2012.

(c) Kuek Hock Eng ("KHE"): The late son of KSB and LS. He was originally the administrator of KSB's estate and was subsequently replaced by the Defendants upon the discovery that he was a bankrupt. KHE passed away on 16 April 2013.

(d) Ho Per Jong ("HPJ"): The wife of KHE. She gave evidence for the Defendants, who are her children, in the present action.

(e) Kuek Siew Chew: The daughter of KSB and LS. She is the Plaintiff in the present action.

(f) Kuek Siew Eng ("KSE"): The other daughter of KSB and LS. She was a Plaintiff's witness in the present action.

(g) Kuek Siang Wei: The son of KHE and HPJ. He is the first defendant in the present action.

(h) Kuek Tsing Hsia: The daughter of KHE and HPJ. She is the second defendant in the present action.

4 For ease of reference, LS' family will be referred to as the first family while GAP's family will be referred to as the second family. While the matter was disputed, it appears that prior to KSB's demise on 30 January 2007, the first family did not know that KSB had another family with GAP or that if they did, they did not know much about the second family.

5 On his death, KSB did not leave behind any will, but the first family subsequently found in KSB's safe a note dated 23 May 2002 purportedly written by him, setting out the division of his assets amongst the members of the first family and the second family. However, the note could not be recognised as a valid testamentary instrument under the law as KSB had failed to affix his signature on it and it was not attested to by any witness.

6 The unsigned note tendered as evidence was a photocopy of the original handwritten note. [note: 1] The unsigned note was predominantly written in Chinese. While a certified translation was not provided, an English version was set out in KSW's affidavit of evidence-in-chief. [note: 2] The substance of KSB's wishes as set out in the unsigned note was not disputed by the parties. For ease of reference, they are briefly set out as follows:

(a) KSB's house at Toh Tuck Road ("the Toh Tuck Property") was given to KSW and his brother, Kuek Yong Wei ("KYW"). These are the grandsons of KSB.

(b) Two properties located in Johor Bahru, Malaysia were given to KHE.

(c) The Jurong Kechil shophouse was given to the second family.

(d) A sum of $1.65m was to be divided as follows:

(i) KHE (son of KSB): $400,000;

(ii) KSE (daughter of KSB): $200,000;

(iii) the Plaintiff (daughter of KSB): $200,000;

(iv) LS (wife of KSB): $200,000;

(v) HPJ (wife of KHE): $200,000;

(vi) KTH (daughter of KHE): $100,000;

(vii) Kuek Tsing Qi (daughter of KHE): $100,000;

(viii) Kuek Tsing Xiu (daughter of KHE): $100,000;

(ix) Kerk Hup Hin (brother of KSB): $100,000;

(x) Yak Hong Eng (wife of Kerk Hup Hin): $50,000.

(e) The balance of the cash and shares, which was not particularised in the note, was given to KSW and KYW (the sons of KHE and grandsons of KSB).

7 The significant points to be gleaned from the unsigned note are set out as follows:

(a) The daughters of KSB, the Plaintiff and KSE, were each given $200,000, with no share in the residuary estate.

(b) The deceased's son, KHE, was to receive the two properties in Johor Bahru, Malaysia, together with a sum of $400,000.

(c) The grandsons of KSB, KSW and KYW, were to receive the bulk of the estate, that is, the Toh Tuck Property and the remaining cash and shares.

(d) While the unsigned note referred to the residuary estate, it did not indicate the size of the balance of the cash and shares. As will be seen later, the residuary estate is, in fact, very substantial.

(e) The second family's share was limited to the Jurong Kechil shophouse. The second family comprises GAP and her five children.

8 Thereafter, KSB's wife from the first family, LS, executed a deed of consent dated 19 March 2007. [note: 3] This deed of consent was signed (by application of LS' thumb print), sealed, delivered and witnessed by a commissioner for oaths. This deed sets out LS' consent to the wishes of KSB as reflected in the unsigned note and also to the appointment of KHE as the administrator of the estate.

9 The evidence was that in or around the same time, a letter of consent ("the letter of consent") was signed by all 17 parties named in the note, including members of the second family, signifying their agreement to abide by the wishes of KSB as set out in the note. [note: 4]

10 The evidence as to when this letter of consent was signed by the parties named in the note

was disputed. Indeed, I note that there was no attestation to the parties signing the letter of consent. Neither was there a date to indicate when each party had signed the letter of consent. The evidence, however, supports the view that the letter of consent was signed shortly after 19 March 2007 when a family meeting was held at KSB's home on the 49th day of his death. That said, it also appears that the Plaintiff did not sign it during the meeting at KSB's home. Instead, she and KSE signed the letter of consent later in the evening of that day. The important point, however, is that it was undisputed that the Plaintiff and KSE had signed the letter of consent.

11 While it is accepted that the unsigned note was found in KSB's safe at the Toh Tuck Property, it is acknowledged that the date when the note was found was disputed. In this regard, the evidence of the Plaintiff was difficult to follow. At one point in time, the Plaintiff appeared to state that the note was only found some three or four months after 19 March 2007. This seemed rather unlikely. Indeed, Kerk Teck Sim, a cousin of the Plaintiff who gave evidence on the opening of the safe, estimated that the safe was opened by a locksmith engaged by him and in his presence some two months after KSB's death. It is notable that Kerk Teck Sim was not a beneficiary under the unsigned note and he does not enjoy any rights under the intestacy laws.

12 I also note that while the Plaintiff stated in evidence that she could not confirm the handwriting in the unsigned note as belonging to KSB, the evidence as a whole supports the conclusion that the unsigned note was genuine. In fact, KSE agreed under cross-examination that the unsigned note was written by her father, KSB. [note: 5]

13 Thereafter, KHE applied for the grant of letters of administration in respect of KSB's estate in or around September 2007. [note: 6] Notwithstanding his status as an undischarged bankrupt, KHE was appointed to be the administrator of the estate pursuant to an order-in-terms granted by the court. However, the order was not extracted over the course of the next three years. Throughout this time, the law firm, M/s P S Goh and Co, had conduct of the matter and was responsible for preparing the aforesaid documents and KHE's application.

14 Subsequently in 2010, GAP from the second family signified that she did not want to be bound by the unsigned note and claimed to be entitled to a half share of KSB's estate on the basis of the intestacy regime. In this regard, she lodged a caveat against the estate in the Subordinate Courts (as it then was) and filed an application on behalf of herself and her daughter, Kuek Geok Hua ("KGH"), to be added as joint administrators of KSB's estate.

15 KHE and his wife, HPJ, then sought the assistance of M/s Sankar Ow & Partners LLP on 10 May 2010 with the intention to resist GAP's application. The solicitor in charge of the matter at M/s Sankar Ow & Partners LLP, Mr Chia Soo Michael ("Mr Chia"), was of the view that the letter of consent was likely to be upheld as a family arrangement. Mr Chia was said to have repeated this advice at a subsequent meeting with four members of the first family on 13 May 2010.

16 Notwithstanding this, Mr Chia later issued a written advice to KHE dated 18 May 2010, informing him that there was a possibility that the letter of consent might not be upheld by the court. [note: 7] Mr Chia also confirmed in the letter that the administratorship would likely be replaced by two of KHE's children, namely the Defendants in the current proceedings, in the light of KHE's bankruptcy. In this regard, Mr Chia admitted during cross-examination that he did not send the letter to the other members of the first family, in particular, the Plaintiff, LS and KSE, even though he purported to be acting for the first family. [note: 8] The general tenor of Mr Chia's evidence was that he believed that it was sufficient to communicate by letter, his words of caution regarding the validity of the letter of consent, to KHE.

17 In view of the possible invalidity of the letter of consent, the beneficiaries named in the note belonging or related to the first family subsequently executed a deed of consent dated 8 July 2010 ("the deed of consent"). [note: 9]

18 This deed authorised the Defendants to, amongst others, apply to be the administrators of KSB's estate and to enter into negotiations with the second family for an amicable resolution of the dispute. At this juncture, the parties gave conflicting evidence of the circumstances surrounding the execution of the deed of consent and events relating to KSB's assets in Malaysia, more of which will be elaborated below. Regardless of this, it was agreed that the Plaintiff, LS and KSE were not apprised of the negotiations that took place between the Defendants and the second family.

19 The negotiations eventually culminated in the execution of the deed of family arrangement ("the deed of family arrangement") dated 11 November 2010 between the first family and the second family. [note: 10] In view of the deed of consent above, the first family was represented by the Defendants whereas the representatives of the second family were GAP and KGH. In this regard, the Plaintiff asserted that she had not known of the presence of the deed of family arrangement up until 7 May 2012, when the named beneficiaries under the deed of family arrangement were present at the office of M/s Sankar Ow & Partners LLP to receive their respective shares of KSB's assets. [note: 11]

20 Under the deed of family arrangement between the first family and the second family, the Plaintiff and KSE retained their entitlements (by reference to the unsigned note) of $200,000 each.

21 What was significant was that the aggregate share of the second family was significantly increased. Leaving aside the family home in Singapore, the shophouse in Singapore and the sum of $1.65m, which were to be distributed in accordance with the unsigned note, all other assets, including the shares and the Malaysian properties, were to be divided equally between the first family and the second family on a 50:50 basis.

22 I note in passing that the drafting of the residuary clause in the deed of family arrangement could have been clearer in respect of the purported intention of the parties. On one interpretation, the parties appear to mean that the residuary estate would be split 50:50 between *all* the members of the first family and the second family. On this basis, the Plaintiff and KSE, both members of the first family, would be entitled to further sums over and above their respective shares of $200,000 pursuant to the unsigned note. However, in response to a question that I asked, Mr Chia explained that the reference to the splitting of all other assets between the first family and the second family on a 50:50 basis was not intended to mean that all members of the first family would enjoy a share. In so far as the first family was concerned, the intention was for these other assets (balance of the shares and cash) to be distributed as per the unsigned note (*ie*, to KYW and KSW only). [note: 12]

23 While the terms of the deed of family arrangement could have been expressed in much clearer terms, the point remains that the Plaintiff and KSE's entitlements were to remain at $200,000 each. This was their original entitlement under the unsigned note. Indeed, under re-examination, KSE testified that she was not told that she might receive more than $200,000. [note: 13] Further, under cross examination and re-examination, KSW agreed that there was no intention to give more than $200,000 each to the Plaintiff and KSE. [note: 14]

24 In the meantime, from late 2010 to 2011, HPJ applied for the grant of letters of administration in Johor Bahru, Malaysia, on the basis that she was a beneficiary of KSB's estate.

25 While the Plaintiff and KSE agreed that they had accompanied HPJ to Johor Bahru sometime in 2010 to sign documents at a lawyer's office, they gave evidence that they were not aware of the contents of those documents. The documents were drafted in Malay and both the Plaintiff and KSE were not given explanations, in either Mandarin or Hokkien, as to the contents of those documents. [note: 15] That said, it is reasonably clear that the Plaintiff and KSE must have been cognisant by 2010 that KSB had two properties in Johor Bahru. Indeed, these two properties were also mentioned in the unsigned note as being intended for KHE. Moreover, both the Plaintiff and KSE agreed that the subsequent transfers of two immovable properties in Johor Bahru to KHE were consistent with the unsigned note.

26 Similar to the circumstances surrounding the deed of family arrangement, it is the Plaintiff's case that she did not, however, know of KSB's bank accounts in both Malaysia and Singapore until much later. The Plaintiff also asserted that she only knew about the Malaysian bank accounts after finding a small diary in LS' room after the latter's demise in 2012. [note: 16]

The decision

27 At the outset, there is an issue with the validity of the letter of consent signed by both the members of the first family and the second family in recognition of the unsigned note found in the safe belonging to KSB. After dealing with the letter of consent, I will proceed to address the issue of whether the deed of consent should be set aside. Finally, the issues concerning the validity of the deed of family arrangement will be discussed.

The letter of consent

28 In determining whether the letter of consent executed by the parties is valid, it is essential to construe the nature and purport of the document. For the avoidance of doubt, it is acknowledged that the unsigned note purportedly written by KSB does not amount to a will under the law. Under s 6 of the Wills Act (Cap 352, 1996 Rev Ed) ("the Wills Act"), a will must be in writing and signed by the testator at the foot or end thereof in the presence of two or more witnesses, who shall subscribe to the will in the presence of the testator. In this regard, the unsigned note, not having any form of attestation, is not a testamentary instrument that can give rise to a proper and valid distribution of KSB's assets. Therefore, KSB died intestate and the distribution of his assets is governed by the intestacy laws of Singapore.

29 Leaving aside the issue concerning the legitimacy of KSB's marriage to GAP, the letter of consent essentially amounts to a compromise of the respective entitlements of the beneficiaries under the intestacy regime (see s 7 of the ISA). In this regard, the letter of consent must be executed by way of a deed or a contract in order to give rise to a valid compromise under the law.

30 The letter of consent is, however, not a valid deed in so far as the document does not bear any intention of the parties to execute it as a deed. In this regard, the common law provides that a deed must be signed, sealed and delivered to be legally binding on the relevant parties.

31 In the decision of *Hishiya Seiko Co Ltd v Wah Nam Plastic Industry Pte Ltd and Another* [1993] SGHC 7 ("*Hishiya*"), Punch Coomaraswamy J dealt with the issue of a deed of guarantee that was not sealed by the parties. The learned judge endorsed the English position, as illustrated in the decisions of *Stromdale & Ball Ld v Burden* [1952] 1 Ch 223 and *First National Securities Ltd v Jones and Another* [1978] 1 Ch 109 ("*First National Securities*"), that a document with a signature duly attested to and which bore a wax or wafer or other indication of a seal would give rise to a valid deed. In

particular, the English Court of Appeal in *First National Securities* found that a circle with the letters "L.S" amounted to a seal.

32 In contrast, the letter of consent in this case was only signed by the beneficiaries named in the note without more. Specifically, there was no attestation or any indication of a seal which would have given rise to a valid deed. I am therefore of the view that the letter of consent cannot be upheld as a valid deed in the light of the non-compliance with the requirements set out above.

33 In my judgment, the letter of consent cannot be upheld as a valid and binding contract due to the lack of consideration. Under the general principles governing the law of contract, a valid contract is founded upon the elements of offer and acceptance, consideration, and parties' intention to create legal relations. While the consideration must be sufficient in the sense that it is legally recognised as possessing value in the eyes of the law, it is of course not necessary to establish the adequacy of the consideration.

34 It is well settled that a settlement or forbearance to sue on a claim (especially when it appears that there is a reasonable basis for the claim) can amount to sufficient consideration so as to support a contract. That said, problems can still arise when the claim is doubtful and where it is unclear as to whether the promisee had reasonable grounds for his belief in the claim. This aside, in appropriate cases, a forbearance to sue may amount to valid consideration.

35 The question as to whether a purported deed can be construed and validated as a contract was considered by Coomaraswamy J in *Hishiya*. In that case, consideration in the form of a forbearance to sue was found to be present and the plaintiff's debt claim against the defendant on the basis of the guarantee was therefore allowed.

36 Leaving aside the value of the forbearance to sue, a much trickier question is whether love, affection or moral obligations can be regarded as sufficient consideration in and of themselves. The general rule, of course, is that these are insufficient, as a matter of law, to support a contract. Indeed, it has been said that where the promisee's act flows from an existing moral obligation, the court is very unlikely to recognise the act as being sufficient consideration. Obvious policy considerations loom large.

37 For instance, in *White v Bluett* (1853) 23 LJ Ex 36 ("*White*"), a father agreed to release his son from a debt if the son would stop complaining about the manner in which he had distributed his assets. The promise was held not to bind the father since the son's offer to cease complaining was something he was morally obliged to do. The father was entitled to distribute his assets as he wished. Prof Lee Pey Woan, in *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) ("*The Law of Contract in Singapore*") at para 04.03, suggests that the position may be different if the promisor in *White* had received a practical or factual benefit from the promise. If so, the court might be able to find consideration on the back of the English Court of Appeal's decision in *Williams v Roffey Bros & Nicholls (Contractors) Ltd* [1991] 1 QB 1 ("*Williams*"). In that case, the court upheld a promise by A to pay additional money to B to complete work already agreed to be performed by B in circumstances where B's slow performance exposed A to liability under another contract. Even though B was subject to an existing obligation to do the work, A was said to have received a practical benefit from the completed work.

38 It is not necessary, however, to consider in detail the *Williams* decision or the subsequent local cases that have touched on that decision. Leaving aside the thorny issue of whether there was any real practical benefit received by the parties from the letter of consent, it is apparent that the matter at hand falls to be governed by the law that has developed in respect of family arrangements. This

will be considered below.

39 Leaving aside for the moment the law applying to family arrangements, it follows that in the absence of a valid deed, the alternative construction of the letter of consent as constituting a contract under general contract law fails. This is due to a lack of consideration moving from the parties who would not otherwise have any entitlement under the intestacy regime, such as the Defendants who are the grandchildren of KSB.

40 In elaboration of the entitlement of each member of the first family under the intestacy regime, r 2 read with r 3 of s 7 of the ISA provide that LS would be entitled to a half-share of KSB's estate and the three children, namely, KHE, KSE and the Plaintiff, would each take a one-sixth share of the estate. The grandchildren would not otherwise be entitled to any share of the estate but for the unsigned note purportedly written by KSB.

41 I note in passing that the point may also be raised that if KSB's marriage with GAP were recognised at law, this would directly affect the entitlements of both the first family and the second family under the intestacy laws. Nevertheless, I am not making any finding in relation to this matter given the state of the evidence before me. The legal status of GAP as a wife under customary law has not been determined by a court of competent jurisdiction.

42 In reiteration of my finding above, the letter of consent, in so far as it provides for the entitlements of, amongst others, the grandchildren of KSB, amounts to *gifts* by the beneficiaries under the intestacy laws. In this regard, these gifts would otherwise be invalid unless executed by way of a valid deed.

43 Nevertheless, it was argued that the letter of consent was a valid family arrangement binding on the relevant parties, including the Plaintiff in this instance.

44 At this juncture, it is apposite to refer to the decision of the learned V K Rajah J (as he then was) in *Sheares Betty Hang Kiu v Chow Kwok Chi* [2006] 2 SLR(R) 285 ("*Sheares Betty*"), which considered the issue of validity of a deed of family arrangement at length. In considering the legal significance of a family arrangement, Rajah J at [16] referred to the *Halsbury's Laws of England* vol 18 (Butterworths, 4th Ed, 1997) as follows:

> **301.** … *A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.*
>
> The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.
>
> …
>
> **304.** … Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements. Conversely, an intention to create a legally enforceable contract may be negatived more readily where the parties to an arrangement are members of the same family than where they are not.
>
> **312.** … *Since the consideration for a family arrangement is partly value and partly love and affection, the pecuniary worth of the consideration is not regarded too closely. The court will*

> *not, as a general rule, inquire into the adequacy of the consideration*, but there is an equity to set aside a family arrangement where the inadequacy of the consideration is so gross as to lead to the conclusion that the party either did not understand what he was about, or was the victim of some imposition.
>
> [emphasis in original]

In elaboration of the above, Rajah J opined at [17] that the classic hallmarks of a family arrangement are "a pre-existing family dispute, a clearly declared intention to resolve outstanding matters and a series of arrangements to address outstanding matters".

45 In this case, the letter of consent was signed after the demise of KSB in or around March 2007. The relevant parties had gathered at KSB's last residence, the Toh Tuck Property, to sign the letter of consent. By this time, KHE, HPJ and three of their children had already moved into the Toh Tuck Property. In fact, it was said that they had moved in right after KSB's death.

46 In applying the legal principles above, even if the letter of consent was signed for the purpose of resolving a family dispute upon the demise of KSB in 2007, I am of the view that it does not stand the scrutiny of the law so as to constitute a valid family arrangement for the following reasons.

47 First, the arrangement under the letter of consent gives rise to gross inadequacy of consideration as compared to the distribution under the intestacy laws such that it ought to be set aside. This is notwithstanding that the law on family arrangements does not usually regard adequacy of consideration as an issue given that such an arrangement is founded partly on value and partly on sentiment rather than pure commercial considerations. Notably, in *Pek Nam Kee and another v Peh Lam Kong and another* [1994] 2 SLR(R) 750 ("*Pek Nam Kee*") at [108], it was stated as follows:

> … If, however, the inadequacy of the consideration is so gross as to lead the court to the conclusion that a party to the arrangement either did not understand what he was doing or was the victim of some imposition, the court can set aside the arrangement.

48 Whether or not the gross inadequacy of consideration is to be treated as invalid consideration or simply as evidence from which the court may be able to infer (together with the facts as a whole) a vitiating factor such as *non est factum*, misrepresentation or non-disclosure, the result is that the family arrangement is not enforceable. In this case, the gross inadequacy in consideration stems from a comparison of the entitlements of LS, KSE and the Plaintiff under the intestacy laws as opposed to that provided in the unsigned note.

49 In this regard, the total value of KSB's estate is approximately $13.8m. This is apparent from a letter dated 23 June 2010 from Mr Chia, solicitor for the first family, to Mr Dennis Singham ("Mr Singham"), solicitor for the second family. [note: 17]

50 The entitlements of the three aforesaid parties under the intestacy laws, regardless of whether the second family is taken into consideration in the mathematical exercise, would come up to more than four times of that under the unsigned note, which provided pecuniary legacies of $200,000 each (see [90] below).

51 Second, one of the considerations in determining the validity of a family arrangement is the state of knowledge of the parties concerned. In *Pek Nam Kee*, the learned Judith Prakash JC (as she then was) opined at [109] that:

> It is also not fatal to a family arrangement that a party to it is ignorant of the true state of his rights or is ignorant of the true nature of the arrangement *as long as the transaction has been effected in good faith and the ignorant party has not been misled by any one else* and, in fact, has an intention which is not widely different from that expressed by the arrangement. It is also not essential to a family arrangement that the parties to it receive independent legal advice, though of course this is desirable in the interests of deflecting later challenges to the arrangement.
>
> [emphasis added]

In this regard, Prakash JC emphasised at [110] of *Pek Nam Kee* that a fundamental consideration is first and foremost "whether [the family arrangement] was founded in an honest disclosure of material facts".

52 In considering the totality of circumstances in this case, I am of the opinion that the disparity in knowledge of the parties concerned, namely KHE and HPJ on the one hand, and LS, KSE and the Plaintiff on the other, is such that the letter of consent as a purported family arrangement ought to be set aside.

53 In essence, LS, KSE and the Plaintiff executed the letter of consent without knowing the material fact of the value of KSB's estate. In this connection, they were also not apprised of, amongst other things, the value of the Singapore bank accounts that KSB had and the physical state of the immovable properties in Malaysia. These are facts which the aforesaid parties would have been entitled to know in view of their rights under the intestacy laws. However, they were kept in the dark and even misinformed in the process of the management of the immovable properties in Malaysia. This will be discussed in greater detail in the next section concerning the validity of the deed of consent signed on 8 July 2010.

54 For the reasons above, I am of the judgment that the letter of consent entered into by the parties does not have any binding legal effect as a family arrangement.

The deed of consent

55 The Plaintiff has relied on four main arguments to support her case for the deed of consent dated 8 July 2010 to be invalidated or set aside. They can be broadly classified into the following categories: defence of *non est factum*, lack of independent legal advice, undue influence and material non-disclosure. I will deal with each of these arguments in turn. Applying the principles set out above, the deed of consent dated 8 July 2010 was signed and sealed, and embodied a family arrangement.

Defence of non est factum

56 The Plaintiff has alluded to the fact that the deed of consent was not properly explained to her and that she had been rushed into signing it. On the other hand, the Defendants argued that both the Plaintiff and KSE should be bound by the deed of consent as they were well aware of what they were agreeing to.

57 In this regard, the defence of *non est factum* in the context of deeds has been explained succinctly in *Halsbury's Laws of England* vol 32 (Butterworths, 5th Ed, 2012) at para 236, reproduced as follows:

> Before a party executes a deed, it should be read by him, or correctly read over or fully and

accurately explained to him, and he cannot be required to execute it until this has been done. If he is content to execute it without informing himself of its contents, it will be in general be binding on him, even though its contents are materially different from what he supposed, and even though he is himself illiterate or blind. However, if the party executing the deed acts with reasonable care and yet is mistaken or misled (in particular, if he is illiterate or blind and it is falsely read over or falsely explained to him), and in consequence there is a *radical or fundamental distinction between what is it and what he believed it to be*, not attributable to a mistake of law as to its effect, the plea of non est factum will be available and the deed will be void. Even though all the requirements for avoiding the deed on this ground may not be fulfilled, a misled executing party may be able to treat the deed as voidable under the law relating to *misrepresentation*, or it may be void as executed under a *mutual mistake of fact*.

[emphasis added]

In the High Court decision of *Lee Siew Chun v Sourgrapes Packaging Products Trading Pte Ltd and others* [1992] 3 SLR(R) 855 at [35], Michael Hwang JC cited the following passage of Lord Pearson's judgment in *Saunders v Anglia Building Society* [1971] AC 1004 at 1034:

In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or other document to be signed. By 'sufficiently understanding' I mean understanding at least to the point of *detecting a fundamental difference between the actual document and the document as the signer had believed it to be*. There must be a proper case for such relief. There would not be a proper case if (a) the signature of the document was brought about by negligence of the signer in failing to take precautions which he ought to have taken, or (b) *the actual document was not fundamentally different from the document as the signer believed it to be*.

[emphasis added]

58 Applying the principles set out above, I am of the judgment that the deed of consent was not fundamentally different from what the Plaintiff and KSE had believed it to be. Throughout the course of cross-examination by Dr Raman, the Plaintiff demonstrated that she had knowledge of the nature and purpose of the deed of consent prior to signing it. With regard to the effect of the deed of consent in confirming the earlier letter of consent, the Plaintiff's disagreement appeared to be confined to the *date* on which the letter of consent was signed: [note: 18]

Q: ... So this preamble deals with you *confirming the terms of the first deed of consent in the interest of family harmony*.

A: I'm saying that I did not sign on the 19th of March 2007.

Q: 19th of March is dead and gone, we are now dealing with 8th of July. All right, in that 8th of July second deed of consent, you have stated that *the terms of the 19th March, the first deed of consent, are hereby confirmed*, you see. *You stand by the terms of the first deed as well*.

A: I'm saying that I did not sign on the 19th of March 2007. I disagree to the date.

[emphasis added]

In this respect, apart from the disagreement over the exact date on which the letter of consent was signed, the Plaintiff clearly knew the effect of the deed of consent in upholding the earlier letter of consent. With regard to the other main purpose of entering into the deed of consent, the Plaintiff gave the following evidence in cross-examination: [note: 19]

Q: You and the others in that list, the second deed, had consented to your nephew who is Kuek Siang Wei and your niece, Kuek Tsing Hsia, to take the place of their father to apply for a grant and administer the estate of your late father, agree?

A: Yes, the lawyer told us that my brother was a bankrupt, he could not be administrator. And my brother also said that he have planned to let his children to take over as administrators, and we were asked to sign. So we signed.

In the light of the above, I cannot accept the Plaintiff's argument that she did not know what she was signing when she signed the deed of consent.

59 With regard to KSE, she also stated unequivocally, while being questioned by Mr Tng, that the parties had agreed to the distribution of KSB's assets in accordance to the note: [note: 20]

Q: No, no, listen to the question. There's nothing on the---about the note. I'm talking about the second deed---talking about second deed. When he---when you were called to the office of Mr Michael Chia on the 8th of July 2010, did Mr Michael Chia or anyone from his office or anyone told you that you have to go to the office on the 8th of July 2010 to sign the second deed?

A: Michael Chia explained to me. Michael Chia said that by signing the deed of consent, I will have to agree to follow the note for the distribution of the estate.

KSE also recognised that the deed of consent was for the purpose of appointing the two defendants as the administrators to represent the first family: [note: 21]

Q: Now under this deed, you had appointed the two defendants who are your nephew and your niece to represent the first family. Do you agree?

A: Yes.

Q: And they were authorised to apply for a grant of letters of administration. All right I---answer that---they were gra---authorised to apply for a grant of letters of administration in your later father's estate. Is that correct?

A: Yes. So the two administrators will handle the estate for our family.

Q: Yes.

A: And---

Q: So they were authorised to do so to attend to the estate of your late father.

A: Yes.

Q: Yes, thank you.

60 Considering the evidence as a whole, both the Plaintiff and KSE appeared to have understood the two main purposes behind entering into the deed of consent: to confirm that the distribution would be in accordance to the unsigned note as per the earlier letter of consent and to appoint the defendants as administrators in place of KHE. On that basis, it cannot be said that the deed of consent was fundamentally different from the document the Plaintiff and KSE had believed it to be. The Plaintiff's defence of *non est factum* is therefore rejected in its entirety.

Lack of independent legal advice

61 Apart from the argument that she did not understand the contents of the deed of consent, the Plaintiff also submitted that she was not offered the opportunity to seek independent legal advice prior to signing the deed of consent. In response, the Defendant argued that as a general rule, the mere lack of independent legal advice should not invalidate a transaction in the absence of some vitiating factor, such as *non est factum*, unconscionability, fraud, misrepresentation or undue influence. It was further submitted that the Plaintiff clearly knew the contents of the deed of consent and had signed it voluntarily. The Defendants also argued that in any event, the Plaintiff had waived her right to seek independent legal advice with reference to cl 5 of the deed of consent, which is reproduced as follows: [note: 22]

> That the Parties acknowledge that they have had the opportunity to have this Deed reviewed by an legal advisor or counsel of their own choosing, and if they have opted not to have this Deed reviewed by an independent legal advisor or counsel prior to their signing this Deed, the Parties hereto acknowledge that this is a knowing and conscious waiver of any rights that the Parties may have to legal advisor or counsel in reviewing this Deed.

62 At the outset, I accept the Defendants' argument that the mere lack of independent legal advice should not, in and of itself, be a vitiating factor to invalidate the deed of consent. In this regard, while the lack of independent legal advice may be a relevant fact that the court can take into account in determining whether to set aside a transaction, the party seeking to set aside a transaction has to establish some other factor, such as an inequality of bargaining power, misrepresentation, undue influence or unconscionability. It has been highlighted in *Halsbury's Laws of England* vol 91 (Butterworths, 5th Ed, 2012) at para 924 that it is not essential to the validity of a family arrangement that the various parties should have separate legal advice. In this respect, it was acknowledged that any party might have been properly advised by the family solicitor, which in the present case, was Mr Chia.

63 Returning to the facts of the present case, I am satisfied that the lack of independent legal advice is not a sufficient basis to justify setting aside the deed of consent for the following reasons. First, as discussed in the previous section, the Plaintiff clearly knew the content and purpose of the deed of consent prior to signing it. Second, in considering the evidence as a whole, I am of the view that the Plaintiff and KSE were given ample opportunity to seek independent legal advice prior to signing the deed of consent.

64 It was undisputed that both Mr Chia and Mr Joseph Hoo ("Mr Hoo") were present at the time when the parties signed the deed of consent. In this respect, the evidence before me suggests that cl 5 of the deed of consent was adequately explained to the parties and that the parties were informed of their right to have the deed of consent reviewed by an independent legal counsel. Having elected to turn down the offer to seek independent legal advice, the Plaintiff cannot now attempt to set aside the deed of consent on the basis of a lack of independent legal advice.

65 Third, it is noted that Mr Chia's evidence that he had given the parties *two* opportunities to have the deed of consent reviewed by an independent legal counsel remained unrebutted even under heavy cross-examination by Mr Tng: [note: 23]

> Q: ... Did you give the plaintiff an opportunity to take legal advice on this document?
>
> A: In the course of the morning, when wa---I was explaining the contents of the deed, before the administrator's names were filled in, when wa---I was explaining the clause about them being given, er, independent legal advice. Having the right to seek independent legal advice, I actually asked if they wanted to take the document elsewhere, and nobody said that they wanted to.
>
> Q: Yes? And, even after lunch, the plaintiff---
>
> A: Ev---
>
> Q: ---said that she wanted to take the document for an opinion. Why didn't you allow her?
>
> A: I---I just told you she didn't ask me this question.
>
> Q: All right. She didn't ask you.
>
> A: In fact, when we came back from lunch, when Mr Joseph Hoo came to witness two things, the deed of consent and also the renunciation so that the new administrators could be appointed, I had to read the document all over again to the parties in a lan---language that they understood, before Mr Joseph Hoo would witness them. So that was a second time in which I would have explained the clause about independent legal advice and, no, I mean, if---if a question like that was asked of me in front of another solicitor, there---there's no way I'm going to refuse, er, such a request, and expect the other solicitor to witness the document, that---that's---that would be quite absurd.

66 Mr Chia subsequently confirmed that Mr Hoo was present throughout the meeting in the afternoon of 8 July 2010. Mr Hoo is an advocate and solicitor and a commissioner for oaths. I therefore accept that Mr Hoo was, in all likelihood, present when Mr Chia explained and translated the contents of the deed of consent to the parties. In the circumstances, it would be highly unlikely that Mr Hoo would have stood by idly without intervening if Mr Chia, as the Plaintiff has alleged, turned down her request for the deed of consent to be examined by an independent legal counsel.

67 I therefore find myself unable to accept the Plaintiff's allegation that she was not afforded the opportunity to seek independent legal advice on the day the deed of consent was signed. Given that the Plaintiff had turned down the opportunity to have the deed of consent reviewed by an independent legal counsel, she cannot now attempt to set aside the deed of consent on the sole basis that it was signed without the benefit of independent legal advice.

68 I also note in passing that while the Plaintiff, in her affidavit of evidence-in-chief, denied being given a copy of the deed of consent, she accepted under cross-examination that she was indeed given a copy of the deed of consent at the end of the meeting.

Material non-disclosure

69 The threshold question which has to be considered in addressing the issue of non-disclosure

would be whether the deed of consent amounted to a family arrangement. As referred to at [44] above, Rajah J observed in *Sheares Betty* that the classic hallmarks of a family arrangement are "a pre-existing family dispute, a clearly declared intention to resolve outstanding matters and a series of arrangements to address outstanding matters". On the facts of the present case, I have no hesitation in finding that the deed of consent dated 8 July 2010 was a family arrangement intended to resolve a pre-existing family dispute.

70 Given that the deed of consent amounts to a family arrangement, considerations such as whether there was honest disclosure of material facts or undue influence will be crucial in ascertaining the validity of the deed of consent.

71 In *Pek Nam Kee*, Prakash JC made the following observations (at [107]) on family arrangements in general:

> A court faced with the issue whether a particular family arrangement should be upheld or set aside has to be aware that family arrangements are *very special creatures which have to be treated rather differently from the commercial transactions with which it is more often concerned*. …
>
> [emphasis added]

72 As referred to at [51] above, Prakash JC made a few observations in *Pek Nam Kee* (at [109]–[110]) on the principles governing the validity of such family arrangements:

> 109 It is also not fatal to a family arrangement that a party to it is ignorant of the true state of his rights or is ignorant of the true nature of the arrangement as long as the transaction has been effected in good faith and the ignorant party has not been misled by any one else and, in fact, has an intention which is not widely different from that expressed by the arrangement. It is also not essential to a family arrangement that the parties to it receive independent legal advice, though of course this is desirable in the interests of deflecting later challenges to the arrangement.
>
> 110 What is most important in considering the validity of such an arrangement is first whether it was founded in an honest disclosure of material facts and, secondly, whether any undue influence was brought to bear on any party to the arrangement. In this context, para 315 of *Halsbury's* is worth quoting in full. It states:
>
> > **Duty of disclosure**. In any family arrangement there must be honest disclosure by each party to the other of all such material facts known to him, relative to the rights and title of either, as are calculated to influence the other's judgment in the adoption of the arrangement, and an advantage taken by either of the parties of the other's known ignorance of such facts will render the agreement liable to be set aside.
> >
> > If one party to the arrangement has material information in his possession which, without any dishonest intention, he does not communicate to the others, proceedings by them to set aside the transaction may succeed even though they made enquiries on the subject.

73 On the facts of that case, it was held that an administrator of an estate had a duty to draw up full and complete accounts of the estate. In the accounts, the administrator would have to show, to the best of his ability, the amounts which a legatee had received from the estate and the amounts which the legatee had paid on the estate's behalf. Prakash JC found that the administrator had

presented accounts which left out the expenses paid by the legatee but went further to emphasise to all parties the amount which the legatee had supposedly taken for the legatee's own benefit as background to the drawing up of a deed of family arrangement. It was further held that this amounted to material non-disclosures in the context of the administrator's proposal that the family arrangement be accepted, so as to justify setting aside the deed.

74 Returning to the facts of the present action, I am of the judgment that the Plaintiff has established a case of material non-disclosure so as to justify setting aside the deed of consent. After considering the evidence placed before me, I find, on a balance of probabilities, that the Plaintiff, KSE and presumably LS, were largely kept in the dark with regard to the following material facts:

(a) the value of KSB's estate and their respective entitlements under the ISA; and

(b) the likelihood or possibility that the letter of consent would not be upheld by the court.

75 Even if the view was taken that there was no need to expressly warn the Plaintiff and KSE that the letter of consent might well be invalid at law, I note that the non-disclosure of the size of KSB's estate is in itself a very significant factor given what the Plaintiff would be entitled to receive under the intestacy laws. In fact, the evidence suggests that this pattern of non-disclosure went on for an extended period of time, all the way up to the time when the Defendants (and/or their solicitors) were negotiating with the second family for a settlement of the outstanding dispute.

76 Even if KHE and HPJ were convenient points of contact for Mr Chia in respect of the first family, the fact remains that the Plaintiff, LS and KSE were not informed of the full facts. Nevertheless, for the purposes of ascertaining the validity of the deed of consent, I acknowledge that the primary consideration would be the Plaintiff's knowledge at the time the deed of consent was signed. In this regard, it was undisputed that the unsigned note only referred to the following specific properties:

(a) 28 Toh Tuck Road (*ie*, the Toh Tuck Property);

(b) 88 Jalan Jurong Kechil; and

(c) the two properties located in Johor Bahru, Malaysia.

77 While there was a residuary clause in favour of KYW and KSW, there was no mention of any other specific assets which had belonged to KSB, such as his bank accounts or shares. To be clear, all that was stated was that the balance of cash and shares were to be given to KYW and KSW. There was no indication at all as to what was the value of KSB's cash and shares.

78 Looking at the evidence as a whole, I am of the view that the Plaintiff and KSE only knew about the full and complete accounts of KSB's estate in 2012 when Mr Tng was instructed by the Plaintiff. During the cross-examination by Dr Raman, it was revealed that the Plaintiff was very much kept in the dark with regard to the rest of KSB's assets which were *not* specifically listed in the note: [note: 24]

Q: ... Would you agree that paragraph 7 sets out the assets of the estate of Kuek Ser Beng?

A: Yes.

Q: Thank you. When did you become acquainted with this list of assets?

A: I knew about the shophouse and the shophouse?

Q: Yes.

A: I came to know about his bank accounts after his death---after Michael had checked up the accounts.

Q: He informed you of the bank accounts and the landed properties as well.

A: I came to know *only after 7th of May 2012* when I was asked to sign a document, that I came to know about all the accounts when we disagreed on the distribution. We then engaged lawyers. *Michael then took over the documents from---my---my lawyer then get the documents from Michael*.

Q: Your lawyer meaning Mr Tng here, is it?

A: Yes.

Q: So you have been kept informed nevertheless of the extent of the estate. Am I right?

A: I came to know *subsequently*.

[emphasis added]

Nevertheless, the evidence as to when the Plaintiff discovered the existence of the Malaysian properties was a little confusing. At one point during the trial, the Plaintiff appeared to state that she did not know about the Malaysian properties prior to KSB's death and that she had only found out about the Malaysian properties sometime in 2012 from a small diary belonging to LS which had set out the address of the properties and the bank account numbers. I am, however, of the view that the Plaintiff must have known of the existence of the Malaysian properties when the unsigned note was read. Indeed, the Plaintiff accepted that this was so when questioned further. That said, I accept that she was not aware of the existence of the Malaysian bank accounts until the discovery of LS' diary.

79 The Plaintiff also gave evidence that she had only managed to obtain details concerning the bank accounts in Singapore *after* Mr Tng was appointed: [note: 25]

Q: ... When did you get acquainted with the bank accounts in Singapore which are listed as items (c), (d) and (e)?

A: My lawyer got the information from Michael.

Q: When was it roughly?

A: After 7th May 2012, there was no agreement on the distribution of the assets. I then engaged my own lawyer.

...

Q: When did you find out the exact extent of your father's estate?

A: *After 7th May 2012, there was no agreement on the distribution of my father's estate. I engaged my own lawyer who had contacted Michael to get the information from him*.

[emphasis added]

In this regard, the Plaintiff's account is consistent with the evidence given by KSE in the course of being questioned by Mr Tng: [note: 26]

Q: Now did your brother, Kuek Hock Eng, tell you what was in the estate of your father when Mr Goh Peck San was handling the matter?

A: No, he did not tell me.

Q: What about Mr Michael Chia after he took over from Goh Peck San, did he kept you---let you know how much was in the estate? Did your brother, Kuek Hock Eng, let you know how much was in the estate of your father?

A: No.

KSE thereafter stated unequivocally that they were similarly not informed by the family's solicitors, M/s Sankar Ow & Partners LLP: [note: 27]

Q: All right. Then we come to the two lawyers. Did Mr Goh Peck San update you or inform you what was inside your father's estate?

A: No.

Q: What about Mr Michael Chia? Did Mr Michael Chia inform you what was in the estate of your father? Before the distribution, did Mr Michael Chia---estate---

A: No.

80 Under cross-examination by Dr Raman, KSE maintained that she did not know about the bank accounts in Singapore at that time: [note: 28]

Q: ... Now Mdm Kuek, you see paragraph 7 [of the deed of family arrangement] where the assets are listed, assets of your late father's estate. Do you agree?

A: But I was not informed.

...

Q: Are you saying, Madam---

A: I was aware of the two properties in Singapore but I didn't know about the bank accounts.

Q: You are familiar with the contents of the note, isn't it, which I referred to just now?

A: Yes, only the properties and the shophouse was---

Q: Look carefully---

A: ---were mentioned.

Upon further questioning by Dr Raman, KSE confirmed that they were not informed of "how much was left in [KSB's] bank accounts". [note: 29]

81 In fact, KSE subsequently revealed that they were very much kept in the dark, up until the deed of family arrangement was entered into: [note: 30]

Q: ... So if you are talking about a fair resolution of any dispute, there has to be a full disclosure of all the assets of your late father's estate. Would you agree?

A: But the--*before that, we were not informed what my father had in his estate*.

Q: I'm asking you a question in very general terms based on principle of an amicable resolution which means full disclosure of all the assets. Would you agree with that principle which is the basis for an amicable resolution?

A: Yes.

Q: Yes, thank you. And in pursuit of that amicable resolution, would you agree with me, I hope I'm not repeating myself, would you agree with me there has to be a full disclosure by both parties of the assets of the estate?

A: Now you are talking about negotiation and the negotiation between which parties?

Q: Who are the parties involved in this? Madam, this dispute, the first family and the second family, right? You told us a while ago the second family is taking a larger share than the first family.

A: Yes, to be fair.

Q: Yes, that they have full disclosure, right?

A: Yes.

[emphasis added]

In this respect, while I am prepared to accept that the representatives of the first family (*ie*, the Defendants) and the representatives of the second family (*ie*, GAP and KGH) had fully disclosed the assets in KSB's estate *vis-à-vis* each other, that is, unfortunately, not the issue at hand. The question I am concerned with is whether the Plaintiff, KSE and LS were kept in the dark with regard to the assets in KSB's estate. After considering the evidence as a whole, I find that they were.

82 The fact that they did not know about the full extent of the cash and stocks in KSB's estate even up to 2012 was also apparent in the light of the questions the Plaintiff had asked during the meeting on 7 May 2012 at Mr Chia's office: [note: 31]

FV1:A little more... little bit... what do you mean by "a little bit", how much is "a little bit"...

MV1:We're still calculating at this point lah, there are still certain things that have to be... have to be... paid - a little here, a little there, hor, then... I don't not know either lah, how much

the total amount of their share is going to be in the end. Regarding the stocks – whether there're going to be profits or losses, it's not known at this point as well. At this point, what is known is only the amount of...

FV1: Then how much is the total in cash and stocks now?

MV1: If it's based on the date of death lah, ah... including the two houses, mainly it's in the two houses lah, hor, the houses are already a few millions, hor. Approximately... eh... adding in the houses, approximately $10 million lah, hor. Okay, approximately $10 million lah. But mainly it's in the two houses lah, the rest... [inaudible]

The Plaintiff has identified the reference to FV1 here as being her voice and MV1 being that of Mr Chia's. The Plaintiff persisted in questioning Mr Chia about the amount of cash and stocks in KSB's estate: [note: 32]

FV1: This means that...what I want to know is, eh...taking out the $1.65 million, the rest is... in actual fact how much are the cash and the stocks?

MV1: Roughly a few millions lah, this 0.65, adding it... around $4 million more, approximately, cash.

FV1: How much is the cash?

MV1: Totalling the cash, it's approximately $3 million. Including this lah, there is about $3 million. And then, the stocks are about, in excess, some $2 million more lah. I don't have the figure with me now, hor, but it's approximately this lah.

It is noted that the above conversation had taken place at Mr Chia's office. In the circumstances, I do not find Mr Chia's explanation that he did not have the figures with him at that point in time particularly convincing.

83 In my judgment, at the juncture when the deed of consent was signed by the members of the first family, KHE and HPJ would, in all likelihood, be acquainted with the assets in KSB's estate. They were the ones conversing with Mr Chia throughout that time. In fact, Mr Chia had, on 23 June 2010, sent a letter to Mr Singham, the solicitor representing the second family, setting out a detailed list of assets in KSB's estate. [note: 33] The estimated value of the bank balances in Singapore and the stocks held by KSB were individually listed. In this regard, the only persons who could have supplied Mr Chia with such information would be KHE and HPJ. This was confirmed by HPJ during cross-examination, when she acknowledged that she had helped to look for the relevant letters and documents, which were then passed to Goh Peck San, the solicitor acting on behalf of the estate then.

84 It is also clear from the evidence that KHE, HPJ and their children moved into the Toh Tuck Property shortly after KSB's death. The unsigned note was found in KSB's safe at the Toh Tuck Property. While the unsigned note was read aloud at the time when it was found, it is unclear what other documents (if any) were inside the safe. KHE and his family lived in KSB's house (*ie*, the Toh Tuck Property) with LS until her demise in October 2012. The Plaintiff and her sister, KSE, continued to reside at their own home in Clementi. The Plaintiff and KSE worked as coffee shop assistants at Binjai Park. The evidence established that KHE was already ill with severe kidney problems at that time. KHE clearly had severe financial problems. Indeed, he had been made a bankrupt. LS was illiterate and unwell. She needed to use a wheelchair. It is apparent from the evidence that KHE and HPJ took the lead role in handling matters relating to KSB's estate.

85 I also note in passing that the evidence as to HPJ's application for grant of letters of administration in Johor Bahru in 2010 supports my observation that KHE and HPJ were very much driving the administration of KSB's estate. Indeed, during cross-examination, HPJ stated that she had asked KHE whether it was all right to proceed to make the application and she received the response to go ahead because of his illness and medical expenses. [note: 34] In re-examination, HPJ stressed that KHE's medical expenses were considerable and that after she had sold the Malaysian properties, the monies were spent on KHE's medical expenses. [note: 35] This was so even though HPJ agreed that the sale monies belonged to KSB's estate and would have to be repaid together with the monies in the Malaysian bank accounts. [note: 36] It appears that these monies were also spent on KHE's medical bills. [note: 37]

86 While the questions concerning the legality of HPJ's actions in obtaining letters of administration in Malaysia and the sale of the Johor Bahru properties are not directly before me, I reiterate that the evidence supports the view that KHE and HPJ were the prime movers in the administration of KSB's estate right from an early stage. In all likelihood, they were aware that KSB's estate was very much larger than what was specifically listed in the unsigned note.

87 It bears emphasising that in any family arrangement, there must be honest disclosure by each party to the other of *all* such material facts known to him, relative to the rights and title of either, as are calculated to influence the other's judgment in the adoption of the arrangement. An advantage taken by either of the parties of the other's known ignorance of such facts will render the agreement liable to be set aside. Dishonest intention is not required for the agreement to be set aside in so far as there has been material non-disclosure by one or more parties.

88 On the facts of the present case, the fatal error committed by the parties was the adoption of the mindset that there was simply no need to inform the Plaintiff, KSE and LS about the full extent of the assets in KSB's estate on the basis that they were only entitled to a sum of $200,000 each under the unsigned note. It must be emphasised that the unsigned note has *prima facie* absolutely *no* legal effect whatsoever. As discussed above, it does not fulfil the requirements set out in the Wills Act for it to be considered a testamentary instrument that is binding at law. Therefore, it can only be given effect if *all* potential beneficiaries under the intestacy regime give their *consent* to distribute the assets in accordance with the note. In so doing, they would effectively be compromising any entitlement that they had under the ISA. Under such a circumstance, the full extent of KSB's estate would surely be a material fact which must be disclosed to *all* parties prior to the adoption of the arrangement.

89 For the avoidance of doubt, I agree with Prakash JC's observations in *Pek Nam Kee* that a party's ignorance of the true state of his rights or ignorance of the true nature of the arrangement does not necessarily result in the arrangement being set aside. The arrangement will be upheld in so far as the transaction has been effected in good faith and the ignorant party has not been misled by anyone else. Regrettably, that was not what happened in the present case. As already explained above, it is apparent that at the point in time when the members of the first family were entering into the deed of consent, KHE and HPJ already knew about the full extent of KSB's estate. This was not communicated to the Plaintiff, KSE and LS. On that ground alone, I am of the judgment that this amounts to a material non-disclosure which would justify setting aside the deed of consent in its entirety. In arriving at this conclusion, I also found it useful to refer to a few English authorities setting out the scope of the requirement for disclosure of all material facts in the context of a family arrangement.

90 In *Cocking v Pratt* (1749-50) 1 Ves Sen 400, the deceased had passed away intestate, leaving

a widow and a daughter, who was then a minor. Four months after the daughter's coming of age, she had entered into an agreement with her mother concerning the distribution of the deceased's estate. The agreement was subsequently ratified by the daughter's husband, who commenced an action as administrator of the daughter's estate after her death to set aside the agreement. In allowing the husband's application to set aside the agreement, Sir John Strange MR made the following observations at 401:

> *The mother plainly knew more than the daughter*; and only says in general, she believes she concealed nothing from her. Whether there has been *suppressio veri* is not clear upon the evidence. But there is another foundation to interpose, *viz*. that it appeared afterward that *the personal estate amounted to more*; and the party suffering will be permitted to come here to avail himself of that want of knowledge; not indeed in the case of a trifle; but some bounds must be set to it. The daughter would be entitled to 5 or £600 more; which is very material in such a sum as this, and a ground for the court to set it right: the daughter did not act on a composition, as wanting to marry, and to have ready money: but took this as her full share; and if it appears not so, the court cannot suffer the agreement to stand. As to the ratification and release by the husband; he was *as much in the dark*: this estate therefore should be divided as the law directs, and the agreement set aside.
>
> [emphasis added]

Returning to the facts of the present case, it is acknowledged that the difference between the entitlements of the Plaintiff, KSE and LS under the note and that under the ISA is relatively significant. Assuming the total value of KSB's estate amounted to approximately $13m, the distribution would be as follows:

GAP recognised as spouse under ISA	**ISA**	**Note**	**Difference**
LS	$3.25m	$200,000	$3.05m
Plaintiff / KSE	$810,250	$200,000	$610,250
GAP *not* recognised as spouse under ISA	**ISA**	**Note**	**Difference**
LS	$6.5m	$200,000	$6.3m
Plaintiff / KSE	$2.17m	$200,000	$1.97m

As can be seen from the figures above, it is undisputed that the difference is indeed stark. It is further noted that KHE's family, including HPJ, the Defendants and their other siblings would stand to gain the most in the event that the note was upheld. In the circumstances, given that both KHE and HPJ already knew about the full extent of KSB's estate at the time when the deed of consent was entered into, they should have, at the very least, provided the rest of the first family with the information concerning the assets in KSB's estate.

91 In the other decision of *Groves v Perkins* (1834) 6 Sim 576, a wife, who was deserted by her husband, became entitled to a share of an intestate's property amounting to £3,609. The husband, while he was ignorant of the amount of the share, assigned it in trust for his wife and children, subject to the payment of 10s a week to himself for his life. Although the deed contained a recital stating that the intestate's estate was very considerable, the administrators, who were the wife's

brothers and parties to the transaction, failed to disclose to the husband the amount of the wife's share. In setting aside the deed in its entirety, Sir L Shadwell VC made the following observations at 712–713:

> ... The consideration, however, for which the Plaintiff executed the deed, is very small; and the question is *whether, adverting to the nature of the transaction, there was that disclosure made to the Plaintiff which he was entitled to have*. The administrators do not allege, in their answer, that they stated to the Plaintiff *what was the amount of the intestate's property or of his wife's share of it*; nor is there any evidence to that effect. The deed, it is true, recites that Mrs. Porteus was, at her death, possessed of very considerable personal estate; but *I do not think that that was a sufficient disclosure*. *And though there was not that fraud in the transaction which the Plaintiff has charged, yet, as the administrators withheld from him the knowledge of the amount of his wife's share, there was that non-disclosure of a material fact which compels me to say that the deed cannot stand*. ...
>
> [emphasis added]

In my judgment, the fact that KHE, being the administrator on record at the time when the deed of consent was entered into, had failed to disclose the assets in KSB's estate to the Plaintiff, KSE and LS effectively renders the deed of consent liable to be set aside.

92 Quite apart from the issue of the material non-disclosure concerning the assets in KSB's estate, I note again that Mr Chia had, on 18 May 2010, sent a letter to KHE, where he had cautioned that there was a possibility the earlier letter of consent would not withstand the scrutiny of the court if it were challenged: [note: 38]

> Although M/s P S Goh & Co. had arranged for all the beneficiaries referred to in the document found in your late father's safe to sign a "Letter of Consent" to agree to the purported wishes of your late father contained in the document, there is some doubt as to whether a Court would accept that the "Letter of Consent" would be considered a valid deed of family arrangement that could override the default position provided by the law of intestacy. In the circumstances, if the application by M/s Singham is fought head on, there is real risk that the application may be granted order in terms ...

It is undisputed that this letter was not forwarded to the Plaintiff, KSE or LS. This can be contrasted with the position that Mr Chia had taken when he was advising the members of the first family, including the Plaintiff and KSE: [note: 39]

> Q: Yes. And you have heard that I have been asking you---
>
> A: Mm.
>
> Q: ---more than once, whether, in your opinion, the first consent was a valid document.
>
> A: *In my opinion, it is*.
>
> Q: Yes. And I repeat whether---this question whether the plaintiff and her sister understood your opinion, insofar as the first consent was concerned?
>
> A: *Well, I see no reason that they don't understand it, because it was communicated to them in a language they understood*.

...

Q: No, *it was a valid consent*?

A: *Yes*.

[emphasis added]

When this discrepancy was highlighted to Mr Chia during cross-examination by Mr Tng, he gave the explanation that he was merely setting out the risk of litigation. [note: 40] Even if I were to accept Mr Chia's evidence on this point, I am of the view that as the solicitor acting on behalf of the members of the first family, he ought to have, at the very least, placed the complete list of assets in KSB's estate before *all* members of the first family.

93 Regrettably, based on the evidence given by Mr Chia during cross-examination, he appeared to be labouring under the misconception that there was no need to keep the Plaintiff, KSE or LS informed or updated in so far as their shares under the note (*ie*, $200,000 each) were not affected in any way: [note: 41]

Q: If you have overlooked sending the letters to the plaintiff, would you agree that they were---they were not aware---they were not aware of the developments after the 18th of May and before the 8th of July?

A: That would be correct, yes.

Q: Yes. All right.

A: ... But those---those---those developments could be reported. It doesn't have to be minute reporting because what was agreed amongst themselves is that however the settlement is negotiated, the 1.65 million that's due to them will not be touched. So, if---if that's already settled, as long as there's no discussions to affect their rights under the note, there's no real need for minute reporting. ...

When Mr Chia was confronted with the transcript of the recording by the Plaintiff, he went so far as to state that there was no need to keep the Plaintiff or KSE updated so as long as their shares under the $1.65m were not affected: [note: 42]

Q: ... Do you agree that the plaintiff and her sister, KSE, were both asking about, first of all, details of how much, first of all, the second family will be getting out of the whole estate? In other words, what specific details of the value of the estate, do you agree?

A: Yes, they were, yes.

Q: That is---I put it to you, that is because she was not informed by you---

A: Well---

Q: ---when the settlement was reached.

A: *Well, to be blunt, actually, there was already an agreement of how the negotiation and the settlement was to proceed*. Under the note, your client was entitled to $200,000, under the

note, and that was all she was entitled to, under the note. ... Whilst the intended administrators will assume the role of Kuek Hock Eng for the negotiations, whatever they do, whatever settlement they reach, *they can just not touch that $1.65 million that is set aside for this list of beneficiaries in the note*. So the whole exercise was to tell them, "Look, someone else is throwing in a spanner? Can you all confirm you are not going to throw a spanner?" They confirm they're not going to throw a spanner. We said, "Look, thank you for honouring the note. On our part, what we'll do is we'll make sure that whatever we do, we will not touch your 1.65 million---your share of the 1.65 million." So, that is the very basic premise before we moved on to anything else. *So, actually, what Goh Ah Pi side of the family get, to be blunt, is really none of their business, unless it's going to encroach into the 1.65 million*; which was the very reason why when Dennis Singham's letter of the 29th of June 2010 came and, er, they basically wanted a global half-half. We said, "Cannot". ...

A: So, this 1.65 was set apart for these people ... and we held that sacrosanct. *There was no need to talk to the rest of the people about how ... the amounts of monies was split specifically from me because it didn't touch their 1.65*. ... And when she asked me for details, of course I'm happy to give them the details but, of course, just like when you ask me chapter and verse of legislation, I can't off-hand tell you that that's correct or wrong, I have to go back and go through the files. *So, I gave them rough estimates when they asked me about it. Whether they knew or not, because I didn't tell them, actually, that's---that's---that's quite immaterial to me, because we've not touched their 1.65 million*.

[emphasis added]

While it is acknowledged that most of the events described above occurred *after* the deed of consent was entered into, I am of the view that they go towards showing the mindset of Mr Chia, which was very similar to that of KHE and HPJ, as described above. In essence, their starting position was that the Plaintiff, KSE and LS were only entitled to $200,000 each under the unsigned note. To this end, in so far as their shares were not affected in any way, there was no need to keep them informed about either the breakdown of the assets in KSB's estate, or any developments that had taken place in the course of the administration, including the ongoing negotiations with the second family. As explained above, this approach is wholly misconceived. At the very least, the relevant parties, especially KHE, who was the administrator on record, and Mr Chia, the solicitor acting on behalf of the first family, should have set out the breakdown of the assets in KSB's estate. Having failed to do so, the deed of consent is thereby set aside for non-disclosure of material facts.

94 In arriving at this finding, I acknowledge that the Defendants, specifically KSW, and HPJ have given evidence that the Plaintiff, KSE and LS were kept informed about the assets in KSB's estate. Looking at the evidence as a whole, I cannot accept this as being a true account of the events which had taken place in the light of the overwhelming evidence pointing otherwise – that the Plaintiff, KSE and LS were relatively clueless even up to 2012. In fact, Mr Chia gave evidence that he usually informed either KHE or HPJ (especially after KHE's demise), or towards the later stage of the proceedings, the Defendants, and trusted them to pass on the message to the Plaintiff, KSE or LS. Based on the evidence placed before me, that was clearly not done.

95 For the reasons above, I hereby order that the deed of consent be set aside on the ground of non-disclosure of material facts.

Undue influence

96 The Plaintiff has also alluded to the fact that she was labouring under the influence and

pressure of KHE when she signed the deed of consent. During the course of cross-examination by Dr Raman, the Plaintiff made the following allegations: [note: 43]

> Q: Madam, just to cut it short, in effect, you had authorised Kuek Siang Wei and Kuek Tsing Hsia to administer the estate of your father, yes or no?
>
> A: *My brother scolded us and he said that he would let his children to be the administrators, and he objected to my suggestion letting my mother to be the administrator, so just let his two children---*
>
> Q: Fine.
>
> A: *---to be the administrator*.
>
> Q: All right. Now para 2 of this deed authorises the defendant---for short, I'll call them "defendants", Kuek Siang Wei and Kuek Tsing Hsia. You have authorised them to negotiate to the second family to resolve whatever dispute there may be in the distribution of your father's estate, is that right?
>
> A: We were *forced to---to sign to give our consent* to let the two children to be the administrator and the lawyer said that just let the youngsters to handle the matter.
>
> [emphasis added]

97 In response, the Defendants have relied on HPJ's testimony during cross-examination where she had explained that the alleged anger and shouting was a misunderstanding. In this respect, HPJ gave evidence that KHE's raised voice was attributable to a prior stroke: [note: 44]

> Q: Now your husband Kuek Hock Eng was on dialysis but that did not stop him from threatening the plaintiff whenever he did not get things his way in respect of the estate of the deceased [*ie*, KSB]?
>
> A: There was no---no such thing. Your Honour, *my husband had a stroke before so the way he spoke sometimes he will speak loudly so there was no threatening*.
>
> [emphasis added]

98 In law, it is undisputed that undue influence is a recognised ground for setting aside a family arrangement. In fact, it has been observed that apart from the specific issue of parental influence, a family arrangement would generally be subject to the usual rules of undue influence applicable to ordinary contracts (see *Halsbury's Laws of England*, vol 91 (Butterworths, 5th Ed, 2012) at para 922).

99 Having considered the evidence before me, I am unable to accept the Plaintiff's argument that she had been labouring under KHE's undue influence when she signed the deed of consent. In the first place, it is noted that KHE did not make any promises or threats, express or otherwise, to pressure the Plaintiff into signing the deed of consent. The Plaintiff's entire case for undue influence appeared to rest on the allegation that KHE had raised his voice during the meeting on 8 July 2010. In this respect, it is undisputed that the meeting had taken place in Mr Chia's office. I am of the view that Mr Chia would have interfered in the dispute if it had escalated out of hand, as the Plaintiff has alleged. In fact, under cross-examination by Dr Raman, the Plaintiff acknowledged that she did not inform Mr Chia about the pressure which KHE had exerted on them: [note: 45]

Q: Was this second deed signed at the office of Mr Michael Chia?

A: Yes.

Q: Where---was Mr Michael Chia present when you signed it?

A: Yes.

Q: Did you tell Mr Michael Chia "I don't want to sign this, I'm forced to sign this by my brother"?

A: No, I did not tell the lawyer that but after we got scolding from our brother, we were all very tense and we just signed.

100 Furthermore, it is undisputed that Mr Hoo was also present at the time when Mr Chia had explained the deed of consent to the members of the first family. On that basis, the Plaintiff clearly had ample opportunity to bring any such allegations of undue influence to the attention of the solicitors who were present at that time. Looking at the evidence as a whole, I am of the view that there was no undue influence being exerted at the point in time when the deed of consent was entered into. Coupled with the fact that I have already set aside the deed of consent on the ground of non-disclosure of material facts, I say no more about the Plaintiff's arguments on undue influence.

The deed of family arrangement

101 At the outset, it is noted that unlike the letter of consent and the deed of consent, the deed of family arrangement was not signed by the Plaintiff. The only signatories of the deed of the family arrangement are as follows:

(a) the Defendants, on behalf of the first family; and

(b) GAP and KGH, on behalf of the second family.

Therefore, from the perspective of the first family, the issue of whether the deed of family arrangement is to be upheld will depend on whether the Defendants had the authority to act on behalf of the first family (including the Plaintiff, KSE and LS) to enter into the deed of family arrangement.

102 The Plaintiff has argued that the deed of family arrangement was entered into without the knowledge, concurrence or approval of the Plaintiff, KSE and LS. In the event that the deed of consent was found to be binding, it was further submitted that the Plaintiff had signed the deed of consent to only grant the Defendants and/or the Defendants' solicitors the authority to *negotiate* on their behalf, but not the authority to enter into a binding settlement without the knowledge and approval of the Plaintiff, KSE and LS.

103 In response, the Defendants have relied on the following grounds to support their position that the deed of family arrangement ought to be upheld:

(a) that the Defendants and/or the Defendants' solicitors had actual authority, either express or implied, from the deed of consent to enter into a binding settlement with the second family ("the first ground");

(b) that the doctrine of relation back should apply to validate the deed of family arrangement

as it was made for the benefit of KSB's estate ("the second ground"); or

(c) that the court should exercise its discretion to authorise the deed of family arrangement pursuant to s 56(1) of the Trustees Act (Cap 337, 2005 Rev Ed) ("the Trustees Act") ("the third ground").

104 Given my earlier finding that the deed of consent ought to be invalidated or set aside, the first ground would inevitably fail as the Defendants and/or the Defendants' solicitors would not be able to derive any authority from the deed of consent. Nevertheless, for completeness, I will still proceed to address the first ground relied upon by the Defendants.

The first ground

105 In essence, the Defendants have argued that in the event where the deed of consent is found to be valid, they (including their solicitors) would have the authority, whether express or implied, to enter into the deed of family arrangement on behalf of the first family. In this respect, the Defendants have relied on cl 2 of the deed of consent which, for convenience, is reproduced as follows: [note: 46]

> That the Parties hereto consent agree to and authorise KUEK SIANG WEI and KUEK TSING HSIA to instruct Sankar Ow & Partners LLP or any other law firm or firms ("the Lawyers") on behalf of the Parties hereto to enter into negotiations with the Second Family and/or their solicitors for an amicable resolution of the dispute over the estate of the Deceased [*ie*, KSB] between the Second Family and the Parties mentioned in the recital above ("the Dispute"), to complete the application for Grant of Letters of Administration on behalf of the estate of the Deceased, to institute or defend proceedings in Court in connection with the Dispute.

In response, the Plaintiff submitted that cl 2 of the deed of consent only granted the Defendants and/or their solicitors the authority to *negotiate* on her behalf, but not to enter into a *binding* settlement without the knowledge and approval of the Plaintiff, KSE and LS.

106 At this juncture, it is emphasised once again that the deed of consent is not a usual deed entered into between commercial parties at arm's length. It is a family arrangement. It is therefore important to adopt a different approach towards such family arrangements, as has been highlighted in *Halsbury's Laws of England*, vol 91 (Butterworths, 5th Ed, 2012) at para 906:

> Family arrangements are governed by principles which are not applicable to dealings between strangers. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the court considers what *in the broadest view of the matter is most in the interest of the family*, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. ...
>
> [emphasis added]

107 In *Sheares Betty*, V K Rajah J (as he then was) made the following pertinent observations at [17]:

> It can be concluded from these established principles of law and practice that the arrangement the Beneficiaries and the Settlor entered into was *not a mere ordinary contractual or trust arrangement*. Each and every one of them signed the [deed of family arrangement] which in turn contemplated the execution of the [deed of trust] by the Settlor. It cannot be gainsaid that the Deeds ought to be interpreted harmoniously and cumulatively. Given the Settlor's and the

> Beneficiaries' manifest intentions at the material time, the Deeds *should not be interpreted with an excessive degree of formalism*. *The task of the court in construing such documents is to resolve upon a fair reading of the documents what the Settlor's intention was, and to give effect to it*. In doing so, the court will seek assistance from and apply established rules of construction. The crux of the matter is that these documents constitute a solemn family arrangement signed by all the *dramatis personae*. This is not an instance where the label "family arrangement" has been loosely affixed in an attempt to invoke special legal consideration. All the classic hallmarks of a family arrangement prevail in this case: *a pre-existing family dispute, a clearly declared intention to resolve outstanding matters and a series of arrangements to address the outstanding matters*.
>
> [emphasis added]

Therefore, it bears emphasising that in ascertaining the scope of authority that the Defendants (and/or their solicitors) derived from cl 2 of the deed of consent, the court will have to adopt a flexible and context-specific approach, as opposed to a rigid and formalistic approach.

108 In that regard, I am of the judgment that in the event where the deed of consent is upheld, the Defendants would have the authority not only to *negotiate*, as the Plaintiff has argued, but to also enter into a *binding* settlement with the second family on behalf of the first family. It bears emphasising that cl 2 of the deed of consent specifically states that the Defendants (and/or their solicitors) were authorised to enter into negotiations with the second family "for an amicable resolution" of the dispute between the first family and the second family. In fact, it also goes on to state that the Defendants were also authorised to "complete the application for Grant of Letters of Administration on behalf of the estate of KSB". In ascertaining the scope of cl 2 of the deed of consent, it is useful to consider the prevailing circumstances at the point in time when the deed of consent was entered into by the members of the first family.

109 On 26 April 2010, GAP and her daughter, KGH, had applied to be added as administrators of KSB's estate. [note: 47] This was followed soon after by the lodging of a caveat against KSB's estate on 30 April 2010. [note: 48] In the circumstances, the court process relating to the administration of KSB's estate was brought to a standstill. It was under such a circumstance where the members of the first family authorised the Defendants (and/or their solicitors) to enter in negotiations with the second family. The administration process would not have been able to proceed if the caveat had not been withdrawn by GAP and KGH. Coupled with the express instructions for the Defendants to *complete* the application for grant of letters of administration, the parties would, in all likelihood, have intended the Defendants to enter into a binding settlement with the second family.

110 In fact, when the Plaintiff was confronted with the question of the first family having authorised the Defendants (and/or their solicitors) to negotiate and resolve the outstanding dispute with the second family, the Plaintiff did not disagree and instead chose to stick to her earlier allegation of having been forced into signing the deed of consent: [note: 49]

> Q: All right. Now para 2 of this deed authorises the defendant---for short, I'll call them "defendants", Kuek Siang Wei and Kuek Tsing Hsia. You have authorised them to negotiate to the second family to resolve whatever dispute there may be in the distribution of your father's estate, is that right?
>
> A: We were forced to---to sign to give our consent to let the two children to be the administrator and the lawyer said that just let the youngsters to handle the matter.

As discussed above, I cannot accept the Plaintiff's evidence that she was forced into signing the deed of consent. The Plaintiff's position can also be contrasted with KSE's evidence under cross-examination by Dr Raman: [note: 50]

> Q: You mean to ask the two administrators to speak to the other family?
>
> A: Yes. And to work out an amicable resolution.
>
> Q: Yes, we wanted to settle the matter amicably.
>
> A: Oh, well, I suppose that's way of answering my question.
>
> ...
>
> Q: Well, if you authorised them to negotiate on their behalf, then you have given them full power to work out a fair settlement, isn't it?
>
> A: Yes, we were working out---we were trying to work out a resolution amicably.

111 Looking at the oral testimonies as a whole, the prevailing circumstances at that time and the structure of the relevant clauses in the deed of consent, I am of the view that cl 2 of the deed of consent conferred on the Defendants (and/or their solicitors) the authority to enter into a binding settlement on behalf of the first family with the second family. The Plaintiff's argument that the Defendants' authority was limited to that of entering into negotiations with the second family was excessively formalistic, an approach which had been soundly eschewed by Rajah J in *Sheares Betty*. Nevertheless, given that I have found the deed of consent to be invalid on the ground of material non-disclosure, the Defendants *cannot* then rely on cl 2 of the deed of consent as the basis for having the authority to enter into the deed of family arrangement. I therefore proceed to address the Defendants' second and third arguments in favour of upholding the deed of family arrangement.

The second ground

112 In response to the Plaintiff's argument that the grant of letters of administration had not been extracted at the time the deed of family arrangement was entered into, the Defendants argued that the doctrine of relation back should apply to validate the deed of family arrangement as it was made for the benefit of KSB's estate.

113 The doctrine of relation back in the context of probate and administration was considered in the Court of Appeal decision of *Tacplas Property Services Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Ching Miow, deceased)* [2000] 1 SLR(R) 159 ("*Tacplas Property*"). In that case, it was held that while the property of the estate would vest in the administrator upon the grant of letters of administration, such vesting did not confer on the administrator the authority to deal with those assets until the *order of the grant* was extracted. In that regard, the authority of an administrator to deal with the assets of the deceased's estate stemmed from the extracted grant, without which the administrator had no authority. Chao Hick Tin JA, in delivering the judgment of the court, made the following observations at [44] on the doctrine of relation of back:

> ... The administrator's title to the assets of the estate vests in him from the time the grant of the letters of administration is extracted. The doctrine of relation back is an exception to that rule. The doctrine permits the title of the administrator to relate back to the time of the death of the deceased so as to give validity to certain acts done by an administrator before the letters of

administration are extracted. ...

114 In my judgment, the doctrine of relation back is not applicable to the present case given that both the letter of consent and the deed of consent have been set aside. In the circumstances, the Defendants did not have the requisite authority to enter into the deed of family arrangement, which clearly envisaged different entitlements from the default position as set out in the ISA. Given that KSB had passed away intestate, the only way in which a distribution other than that set out in the ISA is to be upheld would be in a situation where *all* potential beneficiaries agree to compromise their claims under the ISA.

115 Returning to the facts of the present case, it bears emphasising that the letter of consent and the deed of consent have been found to be invalid. The default position under the ISA would therefore apply. Given that the deed of family arrangement purported to give rise to a distribution that differed from the default position under the ISA, it would not have any legal effect in the absence of consent by the relevant parties. The doctrine of relation back is therefore not applicable in the present case.

The third ground

116 Finally, the Defendants have also submitted that the court should exercise its powers under s 56(1) of the Trustees Act to authorise the deed of family arrangement. Unfortunately, the Plaintiff's reliance on s 56(1) of the Trustees Act suffers from the same setback as that under the second ground relating to the doctrine of relation back.

117 In the High Court decision of *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 1 SLR 211, Judith Prakash J observed at [35] that s 56(1) of the Trustees Act "deals with the situation where there is the *absence* of a trustee power to manage the trust property, and the court finds that it is expedient to confer such power on the trustee" [emphasis in original]. Meanwhile, in the High Court decision of *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453, Sundaresh Menon JC (as he then was) referred to the earlier Court of Appeal decision of *Rajabali Jumabhoy v Ameerali R Jumabhoy* [1998] 2 SLR(R) 434 and held at [11] that the court's power under s 56(1) of the TA in relation to the management and administration of trust property were limited by the express terms of the trust instrument.

118 In my judgment, s 56(1) of the TA cannot be invoked to empower the Defendants to enter into the deed of family arrangement. At the outset, it must be recognised that s 56(1) of the TA exists for the purpose of enabling a trustee to *manage* and *administer* trust property. What the deed of family arrangement purports to do is to *vary* the distribution of the assets of KSB's estate. As already discussed in the previous section on the doctrine of relation back, given that KSB had passed away intestate (*ie*, without a *valid* will), as the note did not comply with the requirements of the Wills Act, the rules under the ISA would govern the distribution of KSB's assets.

119 In the present case, the Defendants will only be able to distribute the assets of KSB in accordance with the note in the event where all potential beneficiaries taking under the ISA agree to compromise their claims. Given that the Plaintiff, KSE and presumably, LS, had not consented to the distribution of KSB's assets in accordance to the note (as both the letter of consent and the deed of consent have been found to be invalid), the Defendants would be bound to distribute the assets in KSB's estate in accordance with the default position set out in the ISA. The Defendants cannot rely on s 56(1) of the TA to uphold the deed of family arrangement as that would be akin to the court varying the distribution of KSB's estate without the consent of all potential beneficiaries under the ISA. The Defendants' argument based on s 56(1) of the TA is therefore rejected.

Conclusion

120 In the light of the reasons set out above, I granted the following orders:

(a) the letter of consent, the deed of consent and the deed of family arrangement are set aside;

(b) the Defendants, who remain as administrators of KSB's estate pursuant to the court order dated 12 April 2011 granted by the Subordinate Courts, are to undertake all necessary steps (including, but not limited to, the recovery of any assets which have already been distributed, the ascertainment of the status of the second family under the ISA) to distribute KSB's assets in accordance with the ISA; and

(c) the above two orders shall be without prejudice to any party applying for the removal and/or replacement of the Defendants as administrators of KSB's estate.

I note that the Plaintiff has also sought a variety of other remedies concerning the administration of KSB's estate, such as an order to cease distribution of the assets pending the determination of the present dispute and an account of the rental proceeds in respect of the Malaysian properties. As I have reminded both parties throughout the course of the trial, the action before me concerned the validity of the letter of consent, deed of consent and deed of family arrangement. While I allowed counsel for both parties some leeway to introduce evidence concerning the administration of KSB's estate, that was for the sole purpose of setting out the background facts to the legal dispute at hand. The issue of whether the Defendants have breached their duties as administrators of KSB's estate, or the legality of HPJ's actions in Malaysia are not before me in the present action. I therefore decline to make any further orders which the Plaintiff has requested, apart from those set out above.

121 Costs in favour of the Plaintiff to be agreed or taxed.

[note: 1] Kuek Siang Wei's Affidavit of Evidence-in-Chief dated 27 January 2014 ("KSW-1") at p 36.

[note: 2] KSW-1 at pp 3–4, paras 11–12.

[note: 3] KSW-1 at p 24.

[note: 4] KSW-1 at pp 25–27.

[note: 5] Notes of Evidence (13 March 2014) at p 30, lines 3, 9–10.

[note: 6] Defendants' Bundles of Documents, Volume 1 ("DBD-1") at pp 25–26.

[note: 7] DBD-1 at pp 134–136.

[note: 8] Notes of Evidence (18 March 2014) at p 85, lines 6–27.

[note: 9] Plaintiff's Bundle of Documents, Volume 1 ("PBD-1") at Tab 15.

[note: 10] PBD-1 at Tab 16.

[note: 11] Kuek Siew Chew's Affidavit of Evidence-in-Chief dated 17 January 2014 ("KSC-1") at pp 8–9, para 26.

[note: 12] Notes of Evidence (19 March 2014) at p 38, lines 24–31.

[note: 13] Notes of Evidence (13 March 2014) at p 39, lines 7–18.

[note: 14] Notes of Evidence (14 March 2014) at p 43, lines 22–32; p 94, lines 22–32; p 95, lines 1–26.

[note: 15] KSC-1 at p 15, para 44.

[note: 16] KSC-1 at p 3, para 6.

[note: 17] DBD-1 at pp 147–148.

[note: 18] Notes of Evidence (12 March 2014) at p 42, line 32; p 43, lines 1–8.

[note: 19] Notes of Evidence (12 March 2014) at p 45, lines 19–26.

[note: 20] Notes of Evidence (13 March 2014) at p 4, lines 31–32; p 5, lines 1–6.

[note: 21] Notes of Evidence (13 March 2014) at p 21, lines 31–32; p 22, lines 1–10.

[note: 22] PBD-1 at Tab 15.

[note: 23] Notes of Evidence (18 March 2014) at p 98, lines 30–31; p 99, lines 1–20.

[note: 24] Notes of Evidence (12 March 2014) at p 60, lines 2–19.

[note: 25] Notes of Evidence (12 March 2014) at p 62, lines 9–14, 30; p 63, lines 1–3.

[note: 26] Notes of Evidence (13 March 2014) at p 3, lines 4–10.

[note: 27] Notes of Evidence (13 March 2014) at p 3, lines 15–21.

[note: 28] Notes of Evidence (13 March 2014) at p 24, line 32; p 25, lines 1–3, 7–14.

[note: 29] Notes of Evidence (13 March 2014) at p 26, lines 22–23.

[note: 30] Notes of Evidence (13 March 2014) at p 27, lines 21–31; p 28, lines 1–8.

[note: 31] PBD-1 at Tab 20, p 4/23, lines 11–26.

[note: 32] PBD-1 at Tab 20, p 5/23, lines 20–29.

[note: 33] DBD-1 at pp 147–148.

[note: 34] Notes of Evidence (18 March 2014) at p 3, lines 6–11.

[note: 35] Notes of Evidence (18 March 2014) at p 21, lines 4–6.

[note: 36] Notes of Evidence (18 March 2014) at p 21, lines 7–12.

[note: 37] Notes of Evidence (18 March 2014) at p 21, lines 16–17.

[note: 38] DBD-1 at p 134, para 2(c).

[note: 39] Notes of Evidence (18 March 2014) at p 79, lines 21–29; p 80, lines 8–9.

[note: 40] Notes of Evidence (18 March 2014) at p 81, lines 21–32; p 82, lines 1–6.

[note: 41] Notes of Evidence (18 March 2014) at p 90, lines 7–11, 19–25.

[note: 42] Notes of Evidence (19 March 2014) at p 22, lines 27–32; p 23, lines 1–32; p 24, lines 1–29.

[note: 43] Notes of Evidence (12 March 2014) at p 46, lines 27–32; p 47, lines 1–8.

[note: 44] Notes of Evidence (17 March 2014) at p 18, line 32; p 19, lines 1–5.

[note: 45] Notes of Evidence (12 March 2014) at p 46, lines 7–14.

[note: 46] PBD-1 at Tab 15, cl 2.

[note: 47] DBD-1 at pp 66–68.

[note: 48] DBD-1 at pp 85–86.

[note: 49] Notes of Evidence (12 March 2014) at p 47, lines 2–8.

[note: 50] Notes of Evidence (13 March 2014) at p 24, lines 18–21; p 36, lines 31–32; p 37, line 1.